2183.

SUPREME COURT OF THE UNITED STATES.

No. 166.

JOHN HORSTMAN PLAINTIFF IN ERROR,

vs.

JOHN HENSHAW AND AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR MASSACHUSETTS.

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UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court, holden in and for the district of Massachusetts, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between John Horstman, of London, in that part of the kingdom of Great Britain and Ireland called England, a subject of the Queen of Great Britain and Ireland, and alien to each and every of the United States of North America, and not a citizen of either or any of said States, esquire, plaintiff, and John Henshaw, William Ward, and Joseph W. Ward, of Boston, in said district, merchants and co-partners, doing business under the firm and style of Henshaw, Ward & Company, and citizens of the State of Massachusetts, one of the United States of North America, defendants, in a plea of the case, a manifest error has intervened to the great damage of the said John Horstman, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this sixth day of July, in the year of our Lord one thousand eight hundred and forty-seven, and of the independance of the United States the seventy-second.

JAS. B. ROBB, *Clerk.*

Allowed by PELEG SPRAGUE,
Judge U. S. Mass. dist.

John Henshaw, Wm. Ward, and Joseph W. Ward, acknowledge notice of the foregoing writ of error, and waive citation, by their attorney.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachussett, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-six, before the honorable Levi Woodbury, associate justice; Peleg Sprague, district judge.

JOHN HORSTMAN, of London, in that part of the kingdom of Great Britain and Ireland called England, a subject of the Queen of Great Britain and Ireland, alien to each and every of the United States of North America, and not a citizen of either or any of said States, esquire,

versus

JOHN HENSHAW, William Ward, and Joseph W. Ward, of Boston, in said district, merchants and copartners, doing business under the firm and style of Henshaw, Ward and Company, and citizens of the State of Massachusetts, one of the United States of North America.

In a plea of the case, for that wherens, heretofore, to wit, on the day of January, in the year eighteen hundred and forty-five, the said defendants, by their agents at London aforesaid, presented to said plaintiff a certain bill of exchange in writing, made by certain persons under the name and style of Fiske & Bradford, at said Boston, on the fifteenth day of November, in the year eighteen hundred and forty-four, directed to said plaintiff at London aforesaid, and requesting him, at sixty days after sight of that their first of exchange, second and third of same tenor and date unpaid, to pay to the order of Fiske and Bridges the sum of six hundred and forty-two pounds sterling; said bill of exchange purporting to be endorsed by said Fiske and Bridges; the payees thereof, and also endorsed by said defendants; and said defendants, through their said agents, required the acceptance and payment of the said bill of exchange by said plaintiff, and thereby represented to said plaintiff, and undertook, that said bill of exchange was true and genuine, and the signatures thereto and the endorsements thereon were also genuine; whereupon, confiding in the representations and undertakings aforesaid of said defendants, the said plaintiff accepted and paid the amount of said bill of exchange, when the same became due and payable, to the said defendants through their said agents; but the plaintiff avers that the said bill of exchange was not endorsed by said Fiske and Bridges, the payees thereof, or by any person or persons thereunto authorized by them, but that the endorsement thereon, purporting to be their name and signature, was a forgery, of which said defendants had due notice; by means whereof said bill of exchange became and was to said plaintiff wholly worthless and valueless, and the payment of the amount thereof to said defendants by said plaintiff, confiding and trusting in the representations and undertakings aforesaid of said defendants, was wholly without consideration; and that the representations aforesaid of said defendants, confiding in which said plaintiff accepted and paid the amount of said bill to said defendants, were untrue; and that said defendants have not complied with or fulfilled their undertakings and agreements aforesaid; and that thereby said defendants became and were justly indebted to said plaintiff in

the amount of said bill, to wit, the amount of six hundred and forty-two pounds sterling, of the money of Great Britain; and, in consideration thereof, promised the said plaintiff to pay him the same when they should be thereunto requested.

And, also, for that the said defendants, on the day of the purchase of this writ, being indebted to the plaintiff in the sum of five thousand dollars, for goods sold and delivered by the plaintiff to the defendants; and in the same amount for work done, and materials for the same, provided by the plaintiff for the defendants at their request; and in the same amount for money lent by the plaintiff to the defendants; and in the same amount for money received by the defendants to the use of the plaintiff; and in the same amount for money paid by the plaintiff for the use of the defendants at their request; and in the same amount for money due from the defendants to the plaintiff for interest of money before then due and owing from the defendants to the plaintiff, and by the plaintiff forborne to the defendants, at the defendants' request, for a long time before then elapsed; in consideration thereof, promised to pay the same to the plaintiff on demand, yet they have not paid the same; to the damage of the said plaintiff, as he says, the sum of five thousand dollars.

This action was entered at the October term of this court, A. D. 1845, and was thence continued from term to term until the present term.

And now the defendants come to defend, &c., and for a plea say that they never promised in manner and form as the plaintiff doth allege in his writ, and of this put themselves on the country.

W. WHITING, *their attorney.*

And the plaintiff doth the like, by

FLETCHER WEBSTER, *his attorney.*

Issue being thus joined, the cause, after a full hearing, is committed to a jury sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath, that is to say:

The jury find that the defendants did not promise in manner and form as the plaintiff hath alleged against them in his writ.

It is therefore considered by the court that the said John Henshaw, William Ward, and Joseph W. Ward, recover against the said John Horstman the costs of suit, taxed at .

Bill of exceptions.

Circuit court of the United States, for the first circuit, October term, 1846.

DISTRICT OF MASSACHUSETTS, *ss.*

HORSTMAN
vs.
HENSHAW et als.

This was an action of assumpsit, brought to recover $3,114 70, and interest and damages.

On the trial of the cause the following facts were either proved or admitted:

On the 15th day of November, 1844, at Boston, Fiske & Bradford, copartners, drew their bill of exchange for six hundred and forty-two pounds sterling, payable at sixty days' sight to the order of Fiske & Bridge, and directed the same to the plaintiff at London. Fiske & Bridge were a mercantile firm in Boston at that time.

The names of Fiske & Bridge, the payees, were forged on the bill; said bill of exchange, with the forged endorsement of the payees' names, was delivered by the drawers, or one of them, to Thayer and Brothers, brokers, who sold the same, among other bills of exchange, in the usual course of business, to the defendants, bonâ fide and for full value.

The defendants endorsed this bill to Baring, Brothers & Co., at London, for collection, by whom it was presented to the plaintiff, and accepted by him, and paid at maturity on the first of January, 1846, and the proceeds placed to the credit of the defendants. This suit was commenced September, 1845. In April, 1845, the drawers became insolvent and continued so to the time of the trial. One of them received his discharge under the insolvent laws of Massachusetts.

It was not shown that said payees had any interest in or any knowledge of said bill of exchange, but the contrary.

Neither the plaintiff nor the defendant had any suspicion of the forgery at the time of the sale and purchase, acceptance and payment, of the said bill; and no demand or notice to the defendants was proved to have been made in relation to said bill, or the subject-matter of said suit, prior to bringing this action.

At the trial the plaintiff's counsel requested the presiding judge to charge the jury, that if the forgery were proved the defendants would be liable to refund to the plaintiff the amount paid them by him on said bill with interest and damages; but the judge declined so to instruct the jury; and, on the contrary, ruled that if the drawers of the bill sold it for their own benefit, with the names of the payees endorsed upon it when it passed out of their hands, though such endorsement were forged, and received the amount of said bill, and afterwards remained in good credit until April, 1845, and then became insolvent, and have since remained so, and no notice was given to or demand made upon the defendants in relation to said bill or the subject-matter of this suit, until this suit was commenced, then the plaintiff could not recover.

Thereupon the jury found a verdict for the defendants.

To these rulings the plaintiff's counsel excepted, and his exceptions being found conformable to the truth are allowed.

PELEG SPRAGUE, *Judge, &c.*

I, James B. Robb, clerk of the circuit court of the United States, for the first circuit, within and for the district of Massachusetts, certify, that the foregoing is a true transcript of the record in the action entitled John Horstman vs. John Henshaw et als. In testimony whereof I have hereunto set my hand and affixed the seal of said court, this sixth day of July, A. D. 1847, and in the seventy-second year of the independence of the United States of America. JAS. B. ROBB, *Clerk.*